

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

PARAGON LAWNS, INC.,

Respondent

v.

BAREFOOT, INC., D/B/A/ SNAKE'N ROOTER.

Appellant

DOCKET NUMBER WD71111

DATE: March 9, 2010

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Robert Lynn Trout, Judge

Appellate Judges:

Division Three: James Edward Welsh, P.J., Mark D. Pfeiffer, and Karen King Mitchell, JJ.

Attorneys:

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Co-Counsel for Appellant

Attorneys:

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Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**PARAGON LAWNS, INC., Respondent, v. BAREFOOT, INC.,
D/B/A/ SNAKE'N ROOTER, Appellant**

WD71111

Jackson County

Before Division Three Judges: James Edward Welsh, P.J., Mark D. Pfeiffer, and Karen King Mitchell, JJ.

Barefoot, Inc., d/b/a/ Snake 'n Rooter ("Barefoot") appeals the circuit court's judgment granting the motion to enforce a settlement agreement filed by Paragon Lawns, Inc. ("Paragon"). On appeal, Barefoot contends that (1) the court erred in granting a judgment on the pleadings; (2) no enforceable settlement agreement existed; and (3) even if a settlement agreement existed, Barefoot could have avoided it due to a unilateral mistake.

REVERSED AND REMANDED.

Division Three holds:

The circuit court erred in entering a judgment on the pleadings *sua sponte* because its action was contrary to Rule 55.27(b). By providing that it is a party who moves for a judgment on the pleadings, Rule 55.27(b) implicitly entitles the non-moving party an opportunity to respond to the motion before the court rules on it. The court's entering a judgment on the pleadings *sua sponte* denied Barefoot this opportunity.

Because Barefoot's remaining points on appeal attack the merits of the court's determination that the settlement agreement existed and was enforceable, any discussion of them would be premature, and we decline to address them.

Opinion by: James Edward Welsh, Judge

March 9, 2010

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